IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.34 OF 2005

IN

SUIT NO.1558 OF 2004

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M/s.Tyabji Estates Pvt.Ltd.
and Anr. ...Plaintiffs

v/s.

Abid Bahadur Choudhary ...Defendant

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Mr.Navin Parekh i/b Federal & Rashmikant for the Plaintiffs.

Mr.L.K. Tripathi for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 20TH JANUARY,2006

P.C.:

1. This Notice of Motion is taken out by the Plaintiff. By this suit the Plaintiff claims a decree of declaration that the alleged lease deed dated 24-06-1982, by which the Plaintiff No.1 is supposed to have granted lease of the property in favour of the Defendant is unauthorised and not binding on the Plaintiff. According to the Plaintiff, the Plaintiff is in possession of the land, whereas according to the Defendant he is in possession of the land. The Plaintiff by this notice of motion prays for an order of appointment of the Receiver on the land. The court will have to find out as to what are the rights of the Plaintiff and what are the rights that are being claimed by the Defendant in relation to the land. So far as the Plaintiff is concerned, the Defendant also does not dispute the title of the Plaintiff, because the Defendant claims to be the lessee of the land from

the Plaintiffs. The Plaintiff No.1 is a company incorporated under the Companies Act. Obviously, therefore, for claiming valid lease from the Plaintiff No.1/company, the Defendant will have to show that the lease deed was executed in his favour by a person who was duly authorised by the company to execute the lease deed. The Defendant claims that on behalf of the company one of the Directors of the company signed the lease deed. But one finds neither any recital in the lease deed that the said Director was authorised by the company to execute the lease deed nor is the Defendant in a position to show any authority given by the company to anybody to execute the lease deed in his favour. It is further to be seen here that the document pertains to grant 99 years of lease in favour of the Defendant. Admittedly, the lease deed is not registered. Therefore, it cannot be said that any valid lease is created in favour of the Defendant. Thus, it is clear that the Defendant does not have any right whatsoever in relation to the land still the Defendant is claiming to be in possession of the land. The Defendant has no authority to be in possession of the land. In my opinion, therefore, in order to maintain the suit property it will be

appropriate to appoint the Receiver so that the suit property can be protected during the pendency of the suit. The Notice of Motion is, therefore, granted in terms of prayer clause (a). It is directed that the Receiver shall take possession of the property from whomsoever in possession of the property, if necessary by taking police help. The Receiver shall, thereafter, deliver the property in possession of the Plaintiff No.2 as agent of the Receiver. The Plaintiff No.2 has agreed to be in possession of the property as agent of the Receiver. The appointment of the Plaintiff No.2 as agent of the Receiver shall on usual terms and condition, but without royalty and security. The Plaintiff shall take steps to safeguard the property during the pendency of the suit. Till the Receiver takes possession, ad-interim order presently operating shall continue to operate. At the request of the learned counsel appearing for the Defendant it is directed that the Receiver shall take possession of the property after a period of four weeks from today.

Receiver to act on authenticate copy.

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